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THE FEDERAL SEED ACT AND RULES AND REGULATIONS

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During the past few years the Department of Agriculture has been giving considerable thought to the preparation of Federal seed legislation. It was necessary during the consideration of the wording of the draft of the Act to have in mind such regulations as might be necessary, and which in turn had to be framed. Most of the consideration has of necessity, however, been somewhat general in character. Now that we have the new Federal Seed Act, the time has come when we must consider the application of the Act and the regulations to concrete cases.

This paper is a discussion of the Act and its regulations so that their application to specific instances will be clear. It is, of course, difficult to simplify requirements that seem at times quite complicated, so we expect questions will be asked, and questions are always welcome. They help us in the Department to obtain a clearer picture of the problems that will eventually be met, and by answering them, we help those concerned better to understand the Act and thus to comply with its provisions.

Labeling Field Seeds

Pure seed

The labeling requirements of the new Federal Seed Act pertain to seed shipped from one State to another. They do not replace the requirements of the State laws which govern the sale of seed within the State. The labeling requirements are primarily those of the uniform State seed law supported since 1917 by the Association of Official Seed Analysts and the American seed trade, and after which the labeling requirements of most State seed laws are patterned. Where the uniform law calls for the commonly accepted name of such agricultural seeds, the new Federal Seed Act requires that the name of the kind, or the kind and variety, or the kind and type be stated. The percentages of these may be expressed as pure seed which will apply to the kind, the variety, or the type, depending on how the seed is labeled. The percentage of pure seed will apply to the kind of seed, if no variety or type is mentioned; to the variety of the seed, if the variety is mentioned; and to the type of the seed if the seed is labeled as of a type.



Type

In all labeling as to type the word "type" shall be clearly used. This will be explicitly required because "type" is a rather loosely defined term which may be applied to seed the variety of which is known only in a general way. In other words, seed labeled as to type cannot be regarded as being so desirable for the consumer as seed labeled as to variety. In the labeling of hybrid seed corn, the hybrid designation will be construed to be a variety name.

Indistinguishable seed

The old uniform law calls for the percentage of purity which is defined as the percentage of the seeds distinguishable by their appearance. Seeds are considered as indistinguishable when the characteristics of the seeds are such as to make it impossible to distinguish the variety or kind from other varieties or kinds. The seed of Medium and Mammoth (double cut and single cut) red clover is an example.

The loss to the buyer of misbranded seed is in no way lessened because the seed is indistinguishable, and under the new Act proper precautions should be taken to be sure the percentage of pure seed is correct even though the seed is indistinguishable. Proper precautions are defined to include the obtaining of a grower's declaration of variety and a sample of the seed received from the grower. These should be kept by the person who buys the seed from the grower. If the seed is subject to the Act, the grower is responsible under the provisions of the Act for the accuracy of his declaration, even though he did not himself ship the seed from one State to another.

Germination and hard seed

The percentage of germination and hard seed is required to be stated for each kind, variety, or type of seed for which a pure seed percentage is given. The hard seed percentage must be stated separately. The total germination and hard seed may also be shown if accompanied with the words "total germination and hard seed." In order that the percentage of germination may have some meaning at the time the seed is shipped in interstate commerce, no more than 5 months shall have elapsed between the last day of the month in which the test was completed and the date of shipment.

Noxious weeds

The labeling as to noxious weed seeds is determined by the law of the State into which the seed is shipped. If that State prohibits the sale of seeds containing certain noxious-weed seeds, the shipment of that seed into the State is also prohibited.

Name of shipper

The name of the shipper is required to be stated or the name of the consignee may be shown and, if so, a code designation approved by the Agricultural Marketing Service must be used in lieu of the name of the shipper. The code designation may be obtained by writing to the Agricultural Marketing Service.

Lot designation

Each container of agricultural seed shipped in interstate commerce shall be labeled with a lot designation that will make it possible to trace the seed from the records of the shipper. The percentage of other agricultural seeds must be stated and may be indicated by the words, "other crop seeds." Percentages of weed seeds and inert matter must be stated.

Origin

Seeds of alfalfa, red clover, and corn, other than hybrid corn, must be labeled to show the State or States of origin or the part of the State in which the seed was grown. If the seed is grown in different States the label must show the percentage from each State in their order of predominance. If the origin is unknown, the fact must be stated. All labeling as to origin must be supported by first-hand information in possession of the original shipper or by records which trace back to a grower's declaration.

Form of label

We are preparing a number of facsimile labels to show how the statements required by the Act may be made. The form of the label may be adjusted to meet the requirements of State laws or for any other purpose, so long as the wording is legible and the information required by the Act appears upon the label.

Each bag to be labeled

If seed is shipped in bags in interstate commerce for seeding purposes, each and every bag shall be labeled whether in small lots, carload lots, or by truck. Seed represented as being suitable for seed will be construed to be for seeding purposes. The label may be upon a tag attached to the container or upon one of the sides or the top but not on the bottom of the container. Uncleaned seed or seed for processing is required to be labeled to show that it is for processing unless the seed is in bulk, in which case the statements are required to appear on the invoice.

Labeling Lawn Seed

The Federal Seed Act includes lawn seeds within the definition of agricultural seeds. All requirements that pertain to field seeds are also applicable to lawn seeds. This is true with lawn seeds packed in small cartons as well as in large bags. There has been a practice of labeling lawn seeds on the bottom of the paper cartons. The regulations under the new Act require that this label shall appear in a legible manner on the sides or top of the containers. Each container is required to include in the labeling the lot number and the date of germination test.

Date of germination test

Lawn seed shall not be shipped in interstate commerce on a date which is more than 5 months after the last day of the month in which the germination test was completed. The chaff of grass seeds will be construed as inert matter. The methods of testing described in the regulations, which are consistent with those adopted by the Association of Official Seed Analysts, will be used in determining whether the seed contains inert matter.

Mixtures

Mixtures of lawn seeds are required to be labeled to show the percentage of each kind which is present in excess of 5 percent, and the germination and hard seed shall be shown for each kind for which a pure seed percentage is given. The date of test shall also be shown and it is assumed that in some cases this will be shown as one figure applicable to all of the components of the mixture. If the components have been tested in different months, it will be necessary to show the date of test associated with the percentage of germination for each portion of the mixture. Kinds of seed in the lawn seed mixtures which are present in a proportion less than 5 percent may be combined together and shown as other agricultural seeds or as crop seeds showing the total percentage.

Labeling Vegetable Seeds

Vegetable seeds are defined in the regulations under the Act to include 48 enumerated kinds. The labeling of vegetable seeds in interstate commerce, regardless of size of containers in which they are placed, is based on a standard of germination which was arrived at after careful study by the Association of Official Seed Analysts in cooperation with the American Seed Trade Association. The standards were agreed to at a conference between representatives of these organizations and of the Department of Agriculture. The standards are believed to be reasonable and are consistent with those used for many years in States which have a vegetable seed law.

Above standard

Vegetable seeds shipped after August 9, 1940 in interstate commerce which germinate above the standard at time of shipment, need only be labeled to show the kind and variety and the name of the shipper, or in lieu of the name of the shipper, the name of the consignee, with the shipper's code designation obtained from the Agricultural Marketing Service.

Below standard

If the vegetable seeds shipped in interstate commerce germinate below the standards which are established by regulation, the container must be labeled in a legible manner with the words "Below Standard" in type not smaller than eight point. The label shall further show the germination and hard seed and the date of test.

Date of test

No more than 5 months shall have elapsed between the last day of the month in which the test was completed and the date of shipment in interstate commerce. The label is, of course, required to include the name of the kind and variety and name of the shipper or, in lieu thereof, the name of the consignee with the shipper's code designation, as required for vegetable seeds which germinate above standard.

Indistinguishable vegetable seed

Proper precaution should be taken to be sure that the labeling of vegetable seeds as to varieties which are indistinguishable from other varieties by seed characteristics is correct. "Proper precaution" is construed to include the obtaining of a declaration and a sample from the grower. These are to be kept by the person who bought the seed from the grower. In the vegetable seed trade the original shipper will in many instances also be the grower. In this event the shipper will have his own records on which to rely.

Trucking Seed

We received a letter in the Department of Agriculture recently from a trucker of seed in a Middle Western State who requested information as to what requirements of the Federal Seed Act he would have to meet in the transportation from one State to another in his own truck of seed to be sold for seeding purposes. The fact that such an inquiry was received was encouraging. As difficult as we recognize it might be to control the shipment of seed in interstate commerce by itinerant truckers, it is one of the practices subject to the Federal Seed Act that we plan to observe carefully.

Effective control will require the fullest cooperation on the part of State officials, each of whom would be helpless without the full cooperation of the persons within the State to whom the itinerant trucker of seed usually proceeds. The trucker of seed in interstate commerce is subject to the provisions of the Federal Seed Act. The seed is required to be thoroughly labeled and is subject to all the other requirements of the Federal Seed Act. If it is not so labeled, it is our earnest hope that seed dealers and farmers will refuse to purchase the seed. The identity of the trucker or the truck should be reported at once to the person in your State enforcing the State seed law, so further investigation may be made.

Record Requirements

The Act requires that each person who transports or delivers for transportation agricultural seeds in interstate commerce shall keep for a period of 3 years a complete record of the origin, germination, and purity of such seed. It is our desire to keep the record requirements practicable in all detail. We wish to require the keeping of only those records that should be kept by a shipper for his own protection. In general this necessitates the keeping for a period of 3 years a record of all transactions pertaining to each lot of seed, any portion of which has been shipped in interstate commerce. The records include information received and issued, certain samples, and the record of tests, bulking, and cleaning that took place while the seed was in the possession of the shipper.

Samples to be kept

The samples to be retained include one from each lot of seed, any portion of which has been shipped in interstate commerce. The sample should be retained by the shipper for at least 1 year after the lot of seed has been disposed of. The country shipper or dealer who purchases seed directly from a grower should retain for a period of 1 year a sample received from the grower of every lot of seed sold under the name of an indistinguishable kind, type, or variety. The country shipper or dealer who purchases seed directly from a grower should retain for a period of 1 year a sample received from the grower of every lot of alfalfa, red clover, or corn, except hybrid corn, which was obtained from sources not considered local or within the vicinity of the buyer.

Records of origin

All labeling as to origin of alfalfa, red clover, and corn, other than hybrid corn, shall be supported by records traceable to a declaration of origin. The declaration of origin may be issued by a country shipper if the seed is purchased locally. If purchased locally the country shipper should retain a copy of his declaration of origin and attach to it a list of the persons from whom he bought the seed and the amount and the date of the purchases. If a seed is purchased directly from a grower not within the vicinity of the buyer, a declaration of origin should be obtained from the grower and should be retained by the original buyer. If the origin of the seed is unknown, there shall be records traceable to evidence that a declaration as to origin was not obtainable.

Records of variety

Labeling as to variety of seeds, which are indistinguishable from other varieties by seed characteristics, should be supported by records traceable to a declaration of variety, which was issued by the grower of the seed. This declaration should be retained by the person who bought the seed from the grower. Copies, of course, may be issued and furnished to persons to whom he sells the seed as he sees fit.

Forms for declarations

The forms which may be issued for declaration of origin or declarations of kind, variety, or type will be suggested by the Department and it is our thought that trade journals may wish to have the forms prepared for sale to users. These declarations may also serve the purpose of an invoice if desired. The Department is preparing suggested forms for declarations that may be used.

Advertising

The Act states that it shall be unlawful for any person to disseminate or cause to be disseminated any false advertising concerning seed, by the use of the United States mails or in interstate or foreign commerce, in any manner or by any means, including radio broadcasts. Advertising is construed to include all representations, other than those on the label, and false advertisement is construed to mean statements that are false or misleading in any particular. This provision might be considered too restrictive in that advertising may be true under certain conditions and misleading under other conditions or in other localities. It is the intent in the administration of the Act to bear this fact in mind. It is the desire of those engaged in the administration of the Act that seedsmen should also bear this fact in mind.

Catalogs

Despite the tremendous improvement in the representations made in seed catalogs during recent years, it may be well to review them again to avoid any possible misunderstanding with respect to the meaning of the statements as they might be construed by potential purchasers of seed in interstate commerce. We have in mind an instance where a firm quoted certain publications citing the comparative value of a forage crop, which quotations had been used in a catalog for well over 30 years--so long in fact that the firm had no record of the source of the quotations. These statements were undoubtedly true at the time that they were made, but changes have taken place in the comparative value of forage crops. The net result was that the statements were very misleading.

We also recognize that certain classes of farmers are not in a position to discriminate as wisely as they should. We know that it is not possible to protect the buyers of seed from every pitfall. It is our feeling that the buyer of seed must exercise some discretion for his own protection. We believe the buyer should beware and also that the seller should be fair. We are confident that dealers of seeds in interstate commerce are going to do all in their power under the new Federal Seed Act to avoid the dissemination of advertising that may be false or misleading in any particular.

Those of us in the Department of Agriculture will, in so far as time permits, be glad to assist in attempting to determine whether certain forms of advertising, which may have been used extensively in the past, would be construed to be in violation of the new Federal Seed Act. It seems appropriate to indicate at this point that we recognize the Act cannot be retroactive in its effect and that the provisions of the Act and the regulations are only now becoming more familiar to those concerned. With this attitude we feel certain that proper consideration will be given to the advertising disseminated in catalogs in another year.

Screenings

As defined in the Act, screenings include chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed in any way from any seeds in any kind of cleaning or processing and which contain less than 25 percent of live agricultural or vegetable seeds. Screenings of all seeds subject to the Act are prohibited entry into the United States except screenings of wheat, oats, rye, barley, buckwheat, field corn, sorghum including broomcorn, flax, millet, Proso, soybeans, cowpeas, field peas, and field beans.

Imported screenings

Screenings of these kinds of seeds may be imported provided they are not imported for seeding purposes and provided they are declared at time of entry as being screenings for processing, not for seeding, in the invoice or other papers required to be presented to the collector of customs. The sale or offer for sale for seeding purposes of any screenings, which have been imported for other than seeding purposes, is prohibited by the Act.

Screenings in interstate commerce

The transportation or offer for transportation in interstate commerce of screenings of any seed subject to the Act is also prohibited unless the screenings are not intended for seeding purposes and it is stated upon labels, if in containers, or on the invoice, if in bulk, that the screenings are for processing and not for seeding. If the seed is in containers, wording on the label to the effect that the screenings are for processing and not for seeding shall be in 18-point type and

be clearly legible.

Screenings for seeding purposes prohibited

There may be some confusion as to what is necessary to establish the use of screenings for seeding purposes. It is our thought that the use of chaff (which is included within the definition of screenings) as an addition in lawn seed mixtures, or the addition of screenings of such seeds as alfalfa and clovers to seed of higher quality, would be construed as the use of screenings for seeding purposes.

How kind of screenings is determined

A question has arisen as to how the kind of screenings will be determined. It is our view at the present time that screenings are wheat screenings, for instance, not necessarily because they have been removed from wheat but because they consist in a substantial proportion of the seed or parts of seed of wheat; in other words, that the kind of screenings is determined by the material found in the screenings and not by the product from which the screenings were removed. It is our expectation and hope that this attempted control of the movement of screenings in import and interstate commerce will minimize certain practices which have been bothersome to dealers in seeds as well as to the consumers of seeds. ✓

Testing and Tolerances

The Act requires that the method of testing seeds used by the Department in enforcing the Act shall be set forth in the regulations. The methods are primarily those adopted by the Official Seed Analysts of North America and published as Rules for Seed Testing. It has been necessary to change the wording to make it more adaptable for use in seed control. It has also been necessary to establish reasonable tolerances which will be recognized in the administration of the Act. These tolerances are primarily those which are uniformly recognized in the International Seed Testing Association and the Department of Agriculture in Canada. We have made exception for the chaffy grasses including the bluegrasses, redtop and the bontgrasses, the fescues and bronegrass, orchard grass, velvet grass, tall oatgrass, meadow foxtail, sweet vernalgrass, Rhodes grass, Dallis grass, carpet grass, and Bermuda grass. This additional tolerance will also be applicable to mixtures of seed containing in excess of 50 percent of any one or more of the above-named kinds. This additional tolerance is for the purpose of overcoming the difficulty of mixing chaffy grasses to uniform quality. We believe that seedsmen should be especially cautious in the preparation of seed of chaffy grasses in view of the difficulty of bringing such seeds to uniform quality. With due precaution on the part of the seedsmen and recognition of this additional tolerance we anticipate no difficulty.

Purpose of tolerance

We should like to caution seedsmen that the tolerances are not for the purpose of permitting labeling to show higher quality than is actually found by test. The tolerances are provided to take care of the unavoidable variation in the results of tests and difficulty in bringing seed to uniform quality. It should be the part of wisdom to label seed as indicated by test and certainly not with a higher quality than shown by test. We see no objection to labeling seed to indicate quality lower than that indicated by test as many seedsmen have indicated they plan to do. This can be abused, of course, to the point that the information contained on the label would have no meaning to the consumer. We expect, however, that persons shipping seed in interstate commerce will be reasonable and that seed will be found by test to be within a tolerance of statements which appear upon the label.

Imported Seed

✓ The import requirements of the new Federal Seed Act apply to all agricultural seeds and vegetable seeds as defined by the Act.

Pure live seed

The pure live seed requirements are increased from 65 percent to 75 percent and the weed seed restrictions are decreased from 3 percent to 2 percent. Tolerances are required to be recognized by the wording of the Act so the added restrictions as to pure live seed and weed seed percentage is really not appreciable. There is a provision authorizing the Secretary of Agriculture to provide for pure live seed requirements less than 75 percent when seed of that quality cannot be produced in the foreign country. Such exemptions have been made for 20 different kinds of agricultural and vegetable seeds which are enumerated with the respective standards in the regulations.

There has been considerable feeling that additional exemptions should be made of this nature. It has been necessary, however, for the Department to retain standards which it is believed will protect the consumer of the seed to the greatest possible extent from the importation of seed which is unfit for seeding purposes. The Department will, of course, have to study this situation constantly to be assured that the standards are reasonable and can be met in order to permit the importation of seeds which are in need in this country and can be produced in foreign countries.

Noxious-weed seeds in imported seed named in act

An additional feature in the new Federal Seed Act pertaining to imported seed is that it restricts imports of seed containing noxious-weed seeds. These noxious-weed seeds have been named to be white top, Canada thistle, dodder, quackgrass, Johnson grass, bindweed, Russian knapweed, perennial sowthistle, and leafy spurge. The Secretary has authority to add to this list of noxious-weed seeds; however, this is not being done at the present time.

Imports of the smaller seeds such as orchard grass, bromegrass, clovers, and alfalfa cannot contain in excess of 1 noxious-weed seed in each 10 grams of seed. This would prohibit the importation of such seeds when they contain in excess of 45 noxious-weed seeds per pound. Importations of such seed as Sudan grass and buckwheat would be prohibited if they contain in excess of 18 noxious-weed seeds per pound and importations of wheat, oats, vetches, and seeds of this size would be prohibited entry if they contain in excess of 5 seeds per pound.

Exemptions of imports for nonseeding purposes

Many kinds of seeds are imported primarily for other than seeding purposes and for these kinds of seed there are exemptions when imported for other than seeding purposes. Such exemptions are provided for 18 kinds of seeds.

When barley, field beans, common buckwheat, field corn, cowpeas, flax, oats, rice, rye, soybeans, and wheat are imported for seeding purposes, they must be so declared at the time of entry and are then subject to the import requirements of the Act. If any of these seeds should be imported for other than seeding purposes and are later sold or offered for sale for seeding purposes either within the State or in interstate commerce, the person selling or offering such seeds for sale will be subject to prosecution under the Act.

All importations of seed of celery, millet (foxtail, German, Hungarian, and golden), mustard, peas, peppers, Proso, and sorghum must be accompanied at time of entry by declarations as to the purpose for which the seed is imported. When such importations are declared to be for seeding purposes they are subject to the requirements of the Act; and otherwise they are exempted. Importations of such exempted seed are subject to the same restrictions against sale for seeding purposes after importation as those enumerated above.

Release of imported seed

All importations of seed subject to the Act are permitted to proceed to the importer or owner upon the posting of a redelivery bond with the collector of customs. All seeds released to the owner under a redelivery bond must be so marked as to make their identity clear while in the possession of the importer. Failure to comply with this provision will endanger the release of the seed because of loss of its identity.

Staining imported alfalfa and red clover

The provisions of the Federal Seed Act of 1912 as amended as to staining imported alfalfa and red clover are identical with those in the new Act which becomes effective February 5, 1940. The supervision of all cleaning of imported seed prior to its release into the commerce of the United States and supervision of the staining of imported alfalfa and red clover seed will be provided by the Department of Agriculture. Some of this supervision has been previously provided by the Treasury Department. In all such cases after February 5, the expense of travel necessary to perform the supervision will be charged against the importer of the seed.

Cost for supervision of cleaning and staining

The expense that will be incurred will be very little in view of the fact that the Agricultural Marketing Service, which is to administer the new Federal Seed Act, has agents stationed at several cities throughout the United States, who will find it possible to supervise the recleaning and staining of imported seed and the destruction of rejected refuse. The importer or owner of imported seed should be sure to notify the Agricultural Marketing Service whenever such seed is to be moved from one place to another prior to final release.

Falsely labeled imports prohibited

The new Federal Seed Act has a provision that prohibits the importation of seed which is falsely labeled. Such seed will be prohibited entry until the labeling has been corrected. The Act also prohibits the importation of seed that is adulterated by reason of its containing in excess of 5 percent of another kind of seed which is of similar appearance. This does not apply to mixtures of white clover and alsike clover nor to mixtures of red clover and alsike clover.